

State implementation plan (SIP) means a plan developed by an authorized governing body, including States, local governments, and Indian-governing bodies, in a nonattainment area, as required under titles I & II of the Clean Air Act, and approved by the EPA as meeting these same requirements.

Stationary source means any building, structure, facility or installation, other than an area or mobile source, which emits or may emit any criteria air pollutant or precursor subject to regulation under the Act.

Statutory economic incentive program means any EIP submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

Surplus means, at a minimum, emissions reductions in excess of an established program baseline which are not required by SIP requirements or State regulations, relied upon in any applicable attainment plan or demonstration, or credited in any RFP or milestone demonstration, so as to prevent the double-counting of emissions reductions.

Transportation control measure (TCM) is any measure of the types listed in section 108(F) of the Act, or any measure in an applicable implementation plan directed toward reducing emissions of air pollutants from transportation sources by a reduction in vehicle use or changes in traffic conditions.

§ 51.492 State program election and submittal.

(a) *Extreme O₃ nonattainment areas.* (1) A State or authorized governing body for any extreme O₃ nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, pursuant to section 182(g)(5) of the Act, if:

(i) A required milestone compliance demonstration is not submitted within the required period.

(ii) The Administrator determines that the area has not met any applicable milestone.

(2) The plan revision in paragraph (a)(1) of this section shall be submitted within 9 months after such failure or determination, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(b) *Serious CO nonattainment areas.* (1) A State or authorized governing body for any serious CO nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, if:

(i) A milestone demonstration is not submitted within the required period, pursuant to section 187(d) of the Act.

(ii) The Administrator notifies the State, pursuant to section 187(d) of the Act, that a milestone has not been met.

(iii) The Administrator determines, pursuant to section 186(b)(2) of the Act that the NAAQS for CO has not been attained by the applicable date for that area. Such revision shall be submitted within 9 months after such failure or determination.

(2) Submittals made pursuant to paragraphs (b)(1) (i) and (ii) of this section shall be sufficient, together with a transportation control program, to achieve the specific annual reductions in CO emissions set forth in the implementation plan by the attainment date. Submittals made pursuant to paragraph (b)(1)(iii) of this section shall be adequate, in combination with other elements of the revised plan, to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the NAAQS for CO.

(c) *Serious and severe O₃ nonattainment areas.* If a State, for any serious or severe O₃ nonattainment area, elects to implement an EIP in the circumstances set out in section 182(g)(3) of the Act, the State shall submit a plan revision to implement the program in accordance with the requirements of this part. If the option to implement an EIP is elected, a plan revision shall be submitted within 12 months after the date required for election, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(d) *Any nonattainment or attainment area.* Any State may at any time submit a plan or plan revision to implement a discretionary EIP, in accordance with the requirements of this part, pursuant to sections 110(a)(2)(A)

and 172(c)(6) and other applicable provisions of the Act concerning SIP submittals. The plan revision shall not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirements of the Act.

§ 51.493 State program requirements.

Economic incentive programs shall be State and federally enforceable, nondiscriminatory, and consistent with the timely attainment of NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable and permanent over the entire duration of the program, and that the credit taken is limited to that which is surplus. Statutory programs shall be designed to result in quantifiable, significant reductions in actual emissions. The EIP's shall include the following elements, as applicable:

(a) *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.

(1) The statement of goals must include the goal that the program will benefit both the environment and the regulated entities. The program shall be designed so as to meaningfully meet this goal either directly, through increased or more rapid emissions reductions beyond those that would be achieved through a traditional regulatory program, or, alternatively, through other approaches that will result in real environmental benefits. Such alternative approaches include, but are not limited to, improved administrative mechanisms, reduced administrative burdens on regulatory agencies, improved emissions inventories, and the adoption of emission caps which over time constrain or reduce growth-related emissions beyond traditional regulatory approaches.

(2) The incentive-based strategy shall be described in terms of one of the following three strategies:

(i) Emission-limiting strategies, which directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that affected sources are required to meet, while providing flexibility to sources to reduce the cost of meeting program requirements.

(ii) Market-response strategies, which create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

(iii) Directionally-sound strategies, for which adequate procedures to quantify emissions reductions are not defined.

(b) *Program scope.* (1) This element shall contain a clear definition of the sources affected by the program. This definition shall address:

(i) The extent to which the program is mandatory or voluntary for the affected sources.

(ii) Provisions, if any, by which sources that are not required to be in the program may voluntarily enter the program.

(iii) Provisions, if any, by which sources covered by the program may voluntarily leave the program.

(2) Any opt-in or opt-out provisions in paragraph (b)(1) of this section shall be designed to provide mechanisms by which such program changes are reflected in an area's attainment and RFP demonstrations, thus ensuring that there will not be an increase in the emissions inventory for the area caused by voluntary entry or exit from the program.

(3) The program scope shall be defined so as not to interfere with any other Federal requirements which apply to the affected sources.

(c) *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits